

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JIMMY G. SMITH

PLAINTIFF

v.

No. 5:16-cv-002-DPM

CRETE CARRIER CORPORATION and
CURTIS PEAVY, Individually

DEFENDANTS


ORDER

1. Crete's motion for judgment on the pleadings, No. 22, is granted. Smith's claims – as pleaded – are too thin to avoid the bar imposed by *Elrod v. G & R Construction Company*, 275 Ark. 151, 628 S.W.2d 17 (1982) and *Kyser v. Porter*, 261 Ark. 351, 548 S.W.2d 128 (1977). The “policies and procedures” exception recognized in *McLane v. Rich Transport, Inc.*, No. 2:11-cv-101-KGB (E.D. Ark. 9 August 2012) and *Regions Bank v. White*, No. 4:06-cv-1475-JLH (E.D. Ark. 24 September 2009) might salvage an independent claim against the trucking company – if Smith had pleaded any particulars about Crete policies and this accident. He hasn't. The deadline to request pleading amendments has passed. The Court would be flexible on that point if discovery had turned up an applicable policy. But Smith has not given any specifics in his responding papers about policies or procedures in play that have been revealed in discovery, which has been going on for a while. All material

things considered, the direct claims against Crete are ready for decision. And they are dismissed with prejudice.

2. A side note. Back in July the Court granted as modified the parties' motion for a protective order. By 15 November 2016, please send the final version to chambers for signature and entry, or file a joint notice advising the Court that no such order is needed.

So Ordered.



D.P. Marshall Jr.
United States District Judge

8 November 2016